

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

77-298

No.

PETER JAMES,

Petitioner,

v.

WILMINGTON NEWS JOURNAL CO., et al.,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

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TABLE OF CONTENTS

	<i>Page</i>
OPINIONS BELOW	1
JURISDICTION.....	2
QUESTION PRESENTED	2
STATUTES AND FEDERAL RULES INVOLVED	2
STATEMENT.....	2
REASONS FOR GRANTING THE WRIT	4
CONCLUSION	6
APPENDIX A – Order of District Court Granting Re- spondents' Motion To Dismiss.....	1a
APPENDIX B – Judgment of Court of Appeals	1b
APPENDIX C – Statutes and Federal Rules Involved.....	1c

TABLE OF AUTHORITIES

Statutes:

Title 28 U.S.C. § 1254	2
Title 28 U.S.C. § 1332	1,2,3

Federal Rules of Civil Procedure:

Rule 21	2,4,6
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The Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above case on June 2, 1977.

OPINIONS BELOW

The United States District Court for the District of Columbia granted a Motion to Dismiss in favor of respondents. This motion was based upon an alleged lack of complete diversity as between the petitioner and the respondents pursuant to Title 28 U.S.C. § 1332.

In affirming the judgment of the District Court, the United States Court of Appeals for the District of Columbia Circuit, rendered no opinion.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was made and entered on June 2, 1977 and a copy thereof is appended to this petition in Appendix B. The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the Courts below abused their discretion in failing to sever a mere proper party, respondent Ida Kosciesza, as opposed to an indispensable one, when such failure supplied a jurisdictional defect upon which was predicated the dismissal of this action. Furthermore, whether there was an abuse of judicial discretion in light of the fact that this proceeding was originally commenced *pro se* and that the Courts below acted upon notice that a dismissal of this action foreclosed all other remedies as the applicable statute of limitations had run.

STATUTES AND FEDERAL RULES INVOLVED

The pertinent portions of Title 28 U.S.C. § 1254, Title 28 U.S.C. § 1332 and Rule 21 of the Federal Rules of Civil Procedure are set forth in Appendix C.

STATEMENT

On March 7, 1965 petitioner, Peter James, filed a Complaint *pro se* in the United States District Court for the District of Columbia. The named defendants in the Complaint, herein respondents, were three Delaware Corporations: (Wilmington) News Journal Co. ("News Journal"), E. I. du Pont de Nemours and Company ("DuPont") and Christiana Securities Company

("Christiana"); and three individuals: Richard P. Sanger, Norman E. Isaacs and Ida Kosciesza. In this Complaint petitioner alleged that certain defamatory and libelous articles were written and published by respondents.

Peter James had been adjudicated bankrupt on December 9, 1974. As the alleged defamatory material was published before such date of adjudication, it was believed that this suit was the property of the bankruptcy estate pursuant to Bankruptcy Act § 70a5. Thereafter on January 21, 1976 Martin S. Protas, Trustee in Bankruptcy, entered his appearance.

In December of 1975, respondents Christiana, News Journal and the individual respondents had filed motions to dismiss the action for lack of both personal and subject matter jurisdiction and for improper venue, or in the alternative, for transfer of the action to the United States District Court for the District of Delaware. On January 7, 1976 respondent DuPont filed a similar motion to transfer the action to the District of Delaware.

On January 15, 1976 petitioner's counsel filed a memorandum in opposition to News Journal's motion to dismiss or in the alternative to transfer. However, petitioner did not oppose the other respondents' motion to transfer the action to the district of Delaware.

On January 27, 1976 petitioner's counsel filed an Affidavit of Plaintiff Peter James in Opposition to Defendants' Motions, and on February 9, 1976 News Journal filed a Memorandum of Points and Authorities in response to that Affidavit.

The United States District Court for the District of Columbia, thereafter on February 27, 1976 ordered that the action should be dismissed because complete diversity of citizenship between all petitioners and respondents was lacking, and that therefore, the Court had no jurisdiction pursuant to Title 28 U.S.C. § 1332. (This Order appears in Appendix A).

Through counsel, petitioner filed a Notice of Appeal to the United States Court of Appeals for the District of Columbia Circuit on March 26, 1976. Petitioner, however, did not file a brief.

On motion the Trustee, Martin S. Protas, was granted leave to proceed *in forma pauperis* and his opening brief on appeal was served on August 16, 1976. Pursuant to an order of the United States Court of Appeals for the District of Columbia Circuit, this brief was struck as it appeared to the Court that no interest in this action vested in the Trustee. Petitioner, Peter James, was accorded thirty days in which to obtain counsel and file a brief.

After the filing of petitioner's brief through counsel and upon consideration of the issues presented in this cause, the Court of Appeals for the District of Columbia Circuit affirmed, without opinion, the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The Courts below abused their discretion in failing to sever a mere proper party, respondent Ida Kosciesza, as opposed to an indispensable one, when such failure provided the jurisdictional defect upon which the dismissal of this action was based.

Rule 21 of the Federal Rules of Civil Procedure provides that the Court should sever parties that are misjoined on such terms as are just, and that a mere misjoinder of parties *is not grounds* for dismissal. The rule further provides that, absent a proper motion by a party to the action, the Court may raise the issue *sua sponte*:

"Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action on such terms as are just. Any claim against a party may be severed and proceeded with separately." FRCP 21

Despite the absence of a formal motion to sever, petitioner did encourage the United States District Court for the District of Columbia to so sever the allegedly nondiverse respondent. The petitioner's Memorandum of Points and Authorities in Opposition to the respondents' Motion to Dismiss and, In the Alternative, To Transfer this Action to the United States District Court for the District of Delaware stipulated that petitioner would be amenable to a severance of the claim against

respondent, Ida Kosciesza, so as to maintain diversity jurisdiction. The pertinent portion of this Memorandum is as follows:

"...Plaintiffs further oppose the motion of defendant News Journal Company to transfer the action to a different forum. Plaintiffs do not, however, oppose the motions of the various other defendants to transfer the remaining causes of action stated in the complaint to the District of Delaware. Defendants' argument that complete diversity between the plaintiffs and all defendants is lacking is effectively addressed by the aforementioned suggested severance of the various causes of action and the transfer of all but plaintiffs claims against defendant newspaper..."

The above-quoted passage substantiates petitioner's argument that, notwithstanding the absence of a formal motion to sever the mere proper and jurisdictional destroying party, Ida Kosciesza, the Courts below failed to preserve the petitioner's rights by severing the misjoined party and maintaining federal jurisdiction over the remaining respondents.

This failure by the Courts below is accentuated by the fact that the applicable statute of limitations had run prior to the dismissal of this action by the United States District Court for the District of Columbia. As a result of this dismissal, petitioner was foreclosed from seeking any and all judicial relief, whether it be state or federal. This fact was brought to the attention of the District Court in the petitioner's Memorandum of Points and Authorities in Opposition to the respondents' Motion to Dismiss. The pertinent portion is as follows:

"Plaintiffs' emphasize that dismissal of said remaining causes of action would clearly not be in the interest of justice in that:

- (1) Plaintiff who is inexperienced, filed the complaint herein *pro se* and without the benefit of counsel, and
- (2) dismissal would foreclose any possibility that plaintiff may be able to vindicate his rights in the Courts (State or Federal) in that the applicable statute of limitations has now run."

In view of the facts: that the Complaint was originally commenced *pro se*; that the running of the applicable statute of

limitations foreclosed all other relief; that the petitioner's above-quoted Memorandum of Points and Authorities clearly indicated an amenability to the severance of respondent Ida Kosciesza so as to maintain diversity jurisdiction over the remaining respondents, and that Rule 21 of the Federal Rules of Civil Procedure liberally allow the Court on its own initiative to sever misjoined parties, the petitioner herein contends that the Courts below abused their discretion in failing to take the steps necessary to maintain federal jurisdiction of this action. The net result being that petitioner has not yet had his day in Court and he now faces the possibility of never having that day.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari be granted.

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Counsel for Petitioner

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PETER JAMES, et al.,

v.

Civil No. 75-310

WILMINGTON NEWS JOURNAL CO., et al.

ORDER

Upon consideration of the motions to dismiss or, in the alternative for transfer filed by defendants Christiana Securities Company, News Journal Company, Richard P. Sanger, Norman E. Issacs, and Ida Kosciesza, plaintiffs' oppositions thereto, the memoranda in support thereof and in opposition thereto, and all parties having been fully heard and considered in the premises, it appears to the Court that (1) jurisdiction in this action has been invoked pursuant to 28 U.S.C. §1332; and (2) complete diversity of citizenship between all plaintiffs and defendants is lacking.

It is, accordingly, by the Court this 27th day of February, 1976,

ORDERED that defendants' motion to dismiss should be, and the same is hereby, granted.

/s/ eligible
JUDGE

FILED
FEB 27 1976
JAMES E. DAVEY, CLERK

APPENDIX B

United States Court Of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-1415

September Term, 1976

Peter James

Peter James d.b.a.

Peter James & Company, Appellant

Civil 75-0310

v.

(Wilmington) News Journal
 Company, et al.

FILED JUN 2 1977**GEORGE A. FISHER**
CLERK

Appeal from the United States District Court for the District of
 Columbia.

Before: BAZELON, Chief Judge, TAMM, Circuit Judge,
 and JONES,* United States Senior District Judge
 for the United States District Court for the District
 of Columbia

JUDGMENT

This cause came on to be heard on the record on appeal from
 the United States District Court for the District of Columbia,
 and was argued by counsel. While the issues presented occasion
 no need for an opinion, they have been accorded full
 consideration by the Court. See Local Rule 13(c).

On consideration of the foregoing, It is ordered and adjudged
 by this Court that the judgment of the District Court appealed
 from in this cause is hereby affirmed.

Per Curiam
 For the Court

/s/ George A. Fisher
GEORGE A. FISHER
 Clerk

*Sitting by designation pursuant to 28 U.S.C. §294(c).

APPENDIX C

STATUTES INVOLVED

Title 28 U.S.C. §1254(1)

“Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.”

Title 28 U.S.C. §1332(a)(1)

“The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and is between

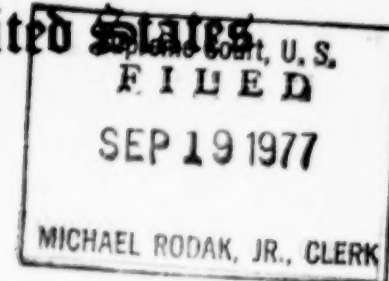
- (1) citizens of different States;”

FEDERAL RULES OF PROCEDURE

Rule 21

“Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court of motion of any party or on its own initiative at any stage of the action on such terms as are just. Any claim against a party may be severed and proceeded with separately.”

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ON PETITION FOR WRIT OF CERTIORARI TO
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FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT BRIEF FOR RESPONDENTS IN OPPOSITION

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INDEX

	<i>Page</i>
OPINIONS BELOW	1
QUESTIONS PRESENTED.....	2
JURISDICTION	2
STATUTE AND RULES INVOLVED.....	2
STATEMENT OF THE CASE	2
ARGUMENT	5
CONCLUSION	9
APPENDIX—STATUTE AND RULES INVOLVED	11

CITATIONS

Cases

Bilbrey v. Chicago Daily News, 57 F.Supp. 579 (D.D.C. 1944)	4
District of Columbia v. Murphy, 314 U.S. 441 (1945)	6
Jaffke v. Dunham, 352 U.S. 280 (1957)	8
Johnston v. Oregon Elec. Ry. Co., 145 F. Supp. 143 (D.Ore. 1956)	7
Laughlin v. Eicher, 145 F.2d 700 (D.C. Cir. 1944), <i>cert. denied</i> , 325 U.S. 866 (1945).....	8
Mas v. Perry, 489 F.2d 1396, <i>reh. denied</i> , 492 F.2d 1242 (5th Cir. 1974), <i>cert. denied</i> , 419 U.S. 842 (1974).....	6
McGrier v. P. Ballantine & Sons, 44 F. Supp. 762 (E.D.N.Y. 1942)	7
Neely v. Philadelphia Inquirer Company, 62 F.2d 873 (D.C. Cir. 1932)	4

Ray v. Bird and Son and Asset Realization Co., 519 F.2d 1081 (5th Cir. 1975).....	7
Rosenthal & Rosenthal, Inc. v. Aetna Cas. and Surety Co., 259 F. Supp. 624 (S.D.N.Y. 1966)	7
Schuckman v. Rubenstein, 164 F.2d 952 (6th Cir. 1947), <i>cert. denied</i> , 333 U.S. 875 (1948)	6
Stine v. Moore, 213 F.2d 446 (5th Cir. 1954)....	6
Washington v. Hospital Service Plan of New Jersey, 345 F.2d 105 (D.C. Cir. 1965) ...	4
Weitknecht v. District of Columbia, 195 F.2d 570 (D.C. Cir. 1952), <i>cert. denied</i> , 344 U.S. 837 (1952).....	6
<i>Statute:</i>	
Title 28 U.S.C. § 1332 (1970).....	2,3,11
<i>Federal Rules of Civil Procedure:</i>	
Rule 21	2,7,11
<i>United States Supreme Court Rules:</i>	
Rule 19	2,5,8,11
<i>Miscellaneous:</i>	
3A Moore's Federal Practice ¶ 21.05[1], at 21-22 (2d ed. 1974).....	7

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JOINT BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The order of the United States District Court for the District of Columbia dated February 27, 1976, granting respondents' motions to dismiss, and the judgment of the United States Court of Appeals for the District of Columbia Circuit, delivered June 2, 1977, affirming the judgment of the District Court, are appended to the Petition for a Writ of Certiorari.

JURISDICTION

Respondents do not question the jurisdiction as set forth in the Petition.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming dismissal by the District Court for lack of complete diversity of citizenship, where such diversity was in fact lacking and where petitioner, who was represented by counsel at all relevant times, made no motion to dismiss the non-diverse party respondent?

2. Was the Court of Appeals' affirmance correct in any event because of a demonstrated lack of personal jurisdiction and improper venue?

STATUTE AND RULES INVOLVED

The pertinent portions of Title 28 U.S.C. § 1332 (1970), Rule 21 of the Federal Rules of Civil Procedure, and Rule 19 of the United States Supreme Court Rules are set forth in the Appendix to this Brief.

STATEMENT OF THE CASE

Petitioner commenced this case by filing pro se a complaint in the United States District Court for the District of Columbia on March 7, 1975.¹ Thereafter, on March 12, 1975, Stanley R. Jacobs entered his appearance as attorney for petitioner. (Appendix p. 3A.)² The complaint

¹The Petition for a Writ of Certiorari erroneously recites this date as "March 7, 1965."

²This and following references are to the Appendix filed in the United States Court of Appeals for the District of Columbia Circuit pursuant to Rule 30(b) of the Federal Rules of Appellate Procedure.

named as defendants three Delaware corporations, Wilmington News Journal Co. ("News Journal"), E. I. duPont de Nemours and Company ("duPont"), and Christiana Securities Company ("Christiana"), and three individuals, Richard P. Sanger, Norman E. Isaacs, and Ida Kosciesza, all of whom are respondents here. (Appendix p. 8A.) The action was primarily one for newspaper libel and related tortious interference with petitioner by respondents, who, it was asserted, maintained places of business in the District of Columbia. (Appendix p. 134A.) The complaint further alleged that petitioner was a resident of Maryland, and that the court had jurisdiction over the action pursuant to 28 U.S.C. § 1332 based on diversity of citizenship and amount in controversy.

On August 26, 1975, Ira M. Lowe and Martin S. Echter entered their appearances as co-counsel for petitioner. (Appendix p. 35A). Michael P. Goldenberg then entered his appearance as counsel for petitioner, on October 14, 1975, following which Messrs. Jacobs and Echter withdrew their appearances. (Appendix pp. 37A-39A.)

On January 15, 1976, petitioner's counsel Mr. Goldenberg filed a memorandum with the District Court on petitioner's behalf, opposing motions filed by respondents during the preceding month. The memorandum objected to the respondents' motions to dismiss the action for lack of personal and subject matter jurisdiction and for improper venue, as well as to respondent News Journal's alternative motion for a transfer to the District of Delaware, though it did not oppose transfer of the action as to other respondents to the District of Columbia pursuant to motion. (Appendix p. 134A.) In addition, on January 27, 1976, Mr. Goldenberg filed an affidavit of petitioner James in opposition to respondents' motions. (Appendix p. 168A.)

The motions and affidavits in support filed by respondents established, in regard to the District Court's lack of personal jurisdiction, that neither Christiana nor its wholly owned subsidiary News Journal maintained

places of business or otherwise engaged in business transactions in the District of Columbia, except for News Journal's employment of one correspondent there for the sole purpose of gathering and reporting news.³ (Appendix pp. 60A-62A, 68A-70A.) The remaining corporate respondent, duPont, was apparently joined in this action only because of the stock interest in it held by, and contemplated merger with, Christiana. (Appendix p. 9A). The motions and supporting affidavits further showed that individual respondents Sanger and Isaacs had no contacts with the District of Columbia other than occasional personal visits and Sanger's attendance at one convention, and that they received copies of the summons and complaint by mail at their homes in Delaware, the State of their residence and citizenship. (Appendix pp. 67A-69A, 73A-75A.) Finally, the motions and supporting affidavits disclosed that individual respondent Kosciesza had no business contacts with the District other than two newsgathering assignments in the four years of her employment by News Journal. (Appendix p. 72A.) With regard to the lack of subject matter jurisdiction, the motions and Mrs. Kosciesza's affidavit showed that she had continuously resided in and been a citizen and domiciliary of Maryland for eight years as of December, 1975, and that she received her copy of the summons and complaint in Maryland. The foregoing allegations were not controverted by petitioner. (Appendix p. 71A).

By order filed February 27, 1976, the District Court, Judge Corcoran, dismissed the action for lack of complete

³It has long been settled that collection of news in the District of Columbia by a foreign newspaper corporation, with personnel and an office in the District employed only for news-gathering, will not be held to constitute either doing or transacting business such as would subject the newspaper corporation to legal process in the District. *Neeley v. Philadelphia Inquirer Company*, 62 F.2d 873 (D.C. Cir. 1932); *Bilbrey v. Chicago Daily News*, 57 F.Supp. 579 (D.D.C. 1944); see also *Washington v. Hospital Service Plan of New Jersey*, 345 F.2d 105, 108 n. 2 (D.C. Cir. 1965).

diversity of citizenship between all the parties plaintiff and defendant. Petitioner's counsel Mr. Goldenberg filed a notice of appeal on March 26, 1976. (Appendix p. 217A.) In the Court of Appeals for the District of Columbia Circuit, the trustee of petitioner's estate in bankruptcy, Martin S. Protas, was granted leave to proceed in this action *in forma pauperis*, but on January 27, 1977, the court struck the trustee's brief, pursuant to joint motion of respondents, holding that the trustee had no interest in the action. The court then allowed petitioner 30 days to obtain counsel or proceed *pro se* and file a brief on appeal, after which the time for filing was extended to March 31, 1977, on motion of Nicholas Kapnistos, who had entered his appearance on behalf of petitioner.

Mr. Kapnistos, who is presently petitioner's counsel, filed a brief on appeal in petitioner's behalf on March 31, 1977. When counsel for the parties appeared for oral argument before the Court of Appeals, Mr. Kapnistos declined to argue, and with consent of counsel for respondents the case was submitted on briefs. On June 2, 1977, upon consideration of petitioner's brief and respondents' brief in opposition thereto, the Court of Appeals affirmed the District Court's judgment dismissing the action without opinion.

ARGUMENT

Petitioner has failed to demonstrate any reason why this Court should grant a writ of certiorari in the present case. He points to no basis in this Court's rules for granting his petition. His assertions that the courts below "abused their discretion" does not bring his case within this Court's Rule 19(1), which indicates *inter alia* that in determining whether to grant the writ the Court may consider a situation:

(b) Where a court of appeals...has so far departed from the accepted and usual course of judicial pro-

ceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of the court's power of supervision.

The facts obviously show no such departure or abuse of discretion. Respondent Kosciesza was a resident, citizen, and domiciliary of Maryland, as she had been for nearly eight years, at the time petitioner filed his complaint. This fact was recited in respondents' memorandum to the District Court in support of their motions to dismiss, and is amply established by Mrs. Kosciesza's affidavit, which petitioner did not contest. Petitioner's own complaint established that he too was a resident of Maryland. The law is well settled that an allegation of residence standing alone is tantamount to an allegation of citizenship and domicile. *District of Columbia v. Murphy*, 314 U.S. 441, 455 (1941); *Stine v. Moore*, 213 F.2d 446 (5th Cir. 1954); *Weitknecht v. District of Columbia*, 195 F.2d 570, 571 (D.C. Cir. 1952), *cert. denied*, 344 U.S. 837 (1952). As a result of the allegations of petitioner and respondents, it affirmatively appeared that petitioner and respondent Kosciesza were citizens of the same State, and hence that complete diversity of citizenship was lacking.

Petitioner had the burden of establishing diversity jurisdiction. *Mas v. Perry*, 489 F.2d 1396, *reh. denied*, 492 F.2d 1242 (5th Cir. 1974), *cert. denied*, 419 U.S. 842 (1974); *Stine v. Moore*, *supra*; *Schuckman v. Rubenstein*, 164 F.2d 952 (6th Cir. 1947), *cert. denied*, 333 U.S. 875 (1948). After petitioner's allegation of diversity of citizenship was contested by respondents' allegations, petitioner utterly failed to meet his burden of proof of diversity. Petitioner's appellate counsel has not contended that there was complete diversity. Instead, he argues that the District Court should have taken it upon itself to dismiss as to respondent Kosciesza, even though petitioner's trial counsel did not so move.

Petitioner's argument that the trial court abused its discretion by not undertaking, on its own motion, to dismiss as to the non-diverse party respondent is totally devoid of

merit. His argument cites no authority and, in fact, runs directly contrary to authority. It relies heavily on Rule 21 of the Federal Rules of Civil Procedure, but ignores the fact that that Rule vests the trial judge with broad discretionary powers in this regard. *See generally* 3A *Moore's Federal Practice* § 21.05[1], at 21-22 (2d ed. 1974) ("Rule 21 gives the court a broad discretion in the matter of dropping or adding parties"). Though petitioner would rewrite Rule 21 to have it compel, rather than merely permit, the courts to sever non-diverse parties on their own initiative, the simple truth is that the Rule, as it currently exists, embodies no such compulsion.

No case has been cited by petitioner, and none has come to the attention of respondents, where a failure to sever a non-diverse party, on the court's own motion, was held to be an abuse of discretion. Indeed, the authority on point is to the contrary. For example, in *Ray v. Bird and Son and Asset Realization Co.*, 519 F.2d 1081, 1083 (5th Cir. 1975), the court held:

...no error can be predicated on the failure of the court to drop Bird & Son [a non-diverse party] on its own motion.

In *Rosenthal & Rosenthal, Inc., v. Aetna Cas. and Surety Co.*, 259 F.Supp. 624, 631 (S.D.N.Y. 1966), the court stated:

The suggestion that diversity jurisdiction can be perfected by the dismissal of the suit against the nondiverse defendant...cannot be entertained since there is no motion by plaintiff before this court seeking such relief.

Accord, Johnston v. Oregon Elec. Ry. Co., 145 F. Supp. 143 (D.Ore. 1956); *McGrier v. P. Ballantine & Sons*, 44 F. Supp. 762 (E.D.N.Y. 1942).

Petitioner, who was at all relevant times actively represented by counsel, made no motion to dismiss the non-diverse party. In his memorandum opposing respondents' motions to dismiss petitioner did not request or suggest dismissal of any party, but instead suggested that he would not oppose the transfer of his action as to

respondents other than News Journal to the District of Delaware. It is plain that this was really no suggestion to dismiss Mrs. Kosciesza at all, but rather was only an inconsistent indication of a desire to retain her as a party but split his lawsuit between two district courts.

Petitioner attempts to evoke the sympathy of the Court by alluding to his pro se drafting of the complaint and his encountering the bar of the statute of limitations now that his action stands dismissed. But at all relevant times after the filing of his complaint petitioner was in fact represented by counsel, as is set forth in detail in respondents' Statement of the Case, *supra*.

It is apparent from the foregoing that the District Court and Court of Appeals cannot be said in any way to have "departed from the accepted and usual course of judicial proceedings" within the meaning of this Court's Rule 19, by failing to dismiss a party *sua sponte*. But even if this were not so, it is clear that the writ should not be granted in the present case. The decisions below must stand in any event since the record shows that there was lack of personal jurisdiction as well as improper venue. An appellate court may affirm the decision of a lower court on any ground that is supported by the record, *Jaffke v. Dunham*, 352 U.S. 280 (1957), and where the record reveals other grounds for affirmance of the judgment, it is immaterial that the lower court's reasoning in reaching that judgment may have been incorrect, *Laughlin v. Eicher*, 145 F.2d 700 (D.C. Cir. 1944), *cert. denied*, 325 U.S. 866 (1945). As demonstrated in respondent's Statement of the Case, *supra*, the District Court for the District of Columbia lacked personal jurisdiction over the principal newspaper respondent, its employees, and parent corporation, due to their lack of residence in and business contacts (including the alleged libel and defamation) with the District of Columbia. Even if the arguments advanced in the petition had merit, it is nonetheless clear that the disposition by the courts below was correct. Remand of this case would

therefore be a futile act. The granting of the writ in these circumstances would be improvident.

CONCLUSION

It is respectfully submitted that petitioner has wholly failed to sustain his burden of establishing under Rule 19 that there are special and important reasons why the writ should be granted. In light of the authorities, and especially in consideration of petitioner's representation by counsel at all relevant times, the courts below did not abuse their discretion in dismissing this action for want of complete diversity. Further, the record shows that there were alternate grounds requiring dismissal and attesting to the correctness of the result below. Accordingly, respondents ask that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

Statute

Title 28 U.S.C. § 1332 (1970)

“(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and is between
 (1) citizens of different States;”

Federal Rules of Civil Procedure

Rule 21

“Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action on such terms as are just. Any claim against a party may be severed and proceeded with separately.”

United States Supreme Court Rules

Rule 19

“1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court’s discretion, indicate the character of reasons which will be considered:

(a) ...

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."